

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

GARY JAY GOLDBERG,

Petitioner,

v.

Case No: 5:21-cv-575-TPB-PRL

WARDEN, FCC COLEMAN –  
LOW,

Respondent.

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**ORDER OF DISMISSAL WITHOUT PREJUDICE**

Petitioner, a federal inmate incarcerated at the Coleman Federal Correctional Complex, initiated this civil action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). In 2013, Petitioner pled guilty in the Southern District of Florida to one count of enticing a minor to engage in sexual activity. *See United States v. Goldberg*, 830 F. App'x 293, 293 (11th Cir. 2020). The trial court sentenced him to a 156-month term of incarceration, followed by a twenty-five-year term of supervised release. *Id.* Petitioner sought a direct appeal of his sentence, and the Eleventh Circuit Court of Appeals affirmed in 2014. *See United States v. Goldberg*, 591 F. App'x 792, 792 (11th Cir. 2014). Petitioner filed a federal habeas petition under 28 U.S.C. § 2255 in 2016, which the district court denied on the merits.

*See Goldberg*, 830 F. App'x at 293.

In his § 2241 Petition, Petitioner seeks to circumvent his plea of guilty and resulting conviction (Doc. 1). He challenges the factual basis underlying his plea, arguing that he did not commit the offense for which he was convicted because when he contacted the minor child, he did not have the required intent to commit the crime (*id.* at 9-10).

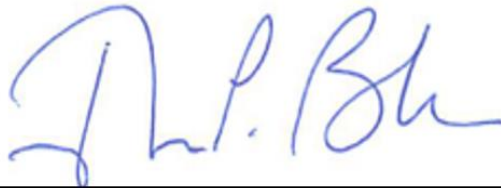
Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *See also* Rule 12, Rules Governing Section 2255 proceedings. The Eleventh Circuit has held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except on very narrow grounds. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017); *Bernard v. FCC Coleman Warden*, 686 F. App'x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93). None of those grounds are present in this case, and thus Petitioner is not entitled to proceed under § 2241. As such, this case is due to be dismissed.

Accordingly, it is

**ORDERED AND ADJUDGED:**

1. This case is **DISMISSED without prejudice**.
2. The Clerk shall enter judgment accordingly, terminate any pending motions, and close this case.

**DONE AND ORDERED** at Tampa, Florida, this 3rd day of December, 2021.



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**TOM BARBER**  
**UNITED STATES DISTRICT JUDGE**

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C: Gary Jay Goldberg, #02800-104